

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SHAWN LENAHAN and JOSEPH
KAPCSOS, On Behalf of Themselves and
All Others Similarly Situated,

Case No.: 02-00045 SRC (TJB)

Plaintiffs,

v.

SEARS, ROEBUCK and CO.,

Defendant.

FILED

JUN 27 2003

AT 8:30
WILLIAM T. WALSH
CLERK

**DECLARATION OF LAURENCE D. KING IN SUPPORT OF PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT AS TO LIABILITY
AND EXHIBITS THERETO**

VOLUME 1 OF 3

I, LAURENCE D. KING, under penalty of perjury, declare:

1. I am a member of Kaplan Fox and Kilsheimer LLP, one of Plaintiffs' counsel in the above-captioned action. I submit this Declaration in support of Plaintiffs' Motion for Partial Summary Judgment As To Liability. The facts contained herein are based upon my own personal knowledge, and if called to do so, I could and would competently testify to their truth.

2. Attached hereto as Exhibit 1 is a true and correct copy of a chart prepared by Plaintiffs' counsel tabulating certain of the information contained in the Declarations collected in the Appendix Of Technicians' Declarations In Support Of Plaintiffs' Motion For Partial Summary Judgment As To Liability.

3. Attached hereto as Exhibit 2 is a true and correct copy of Sears' Answer to Class and Collective Action Complaint dated February, 22, 2002.

4. Attached hereto as Exhibit 3 are true and correct copies of two Scheduling Orders dated January 27, 2003 and April 15, 2002.

5. Attached hereto as Exhibit 4 are true and correct copy of a letter from me to Richard Schnadig dated January 24, 2003 and a letter from Richard Schnadig to me dated January 27, 2003.

6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts of the Deposition of Edward Bergmann taken on March 14, 2002.

7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts of the Deposition of Sarah Elizabeth Carpenter taken on December 12, 2002.

8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts of the Deposition of Robert L. Craddock taken on May 6, 2003.

9. Attached hereto as Exhibit 8 is a true and correct copy of excerpts of the Deposition of Daniel Fitzgerald taken on May 14, 2003.

10. Attached hereto as Exhibit 9 is a true and correct copy of excerpts of Volume 1 of the Deposition of Georgeann Georges taken on November 19, 2002.

11. Attached hereto as Exhibit 10 is a true and correct copy of excerpts of Volume 2 of the Deposition of Georgeann Georges taken on November 20, 2002.

12. Attached hereto as Exhibit 11 is a true and correct copy of excerpts of the Deposition of Thomas Giardina taken on May 28, 2003.

13. Attached hereto as Exhibit 12 is a true and correct copy of excerpts of the Deposition of Mark Good taken on November 18, 2002.

14. Attached hereto as Exhibit 13 is a true and correct copy of excerpts of the Deposition of Chris Granger taken on December 18, 2002.

15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts of the Deposition of David Hubrich taken on May 17, 2003.

16. Attached hereto as Exhibit 15 is a true and correct copy of excerpts of the Deposition of Jan Clell Jensen taken on March 6, 2003.

17. Attached hereto as Exhibit 16 is a true and correct copy of excerpts of the Deposition of Steven Jones taken on March 13, 2003.

18. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of the Deposition of Joseph Kapcsos taken on August 5, 2002.

19. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of the Deposition of Frank J. Kopesky, Jr. taken on February 5, 2003.

20. Attached hereto as Exhibit 19 is a true and correct copy of excerpts of the Deposition of Shawn M. Lehahan taken on August 6, 2002.
21. Attached hereto as Exhibit 20 is a true and correct copy of excerpts of the Deposition of William Miller taken on November 20, 2002.
22. Attached hereto as Exhibit 21 is a true and correct copy of excerpts of the Deposition of John Moran taken on May 5, 2003.
23. Attached hereto as Exhibit 22 is a true and correct copy of excerpts of the Deposition of Hank Parsons taken on November 26, 2002.
24. Attached hereto as Exhibit 23 is a true and correct copy of excerpts of the Deposition of William Raab taken on November 25, 2002.
25. Attached hereto as Exhibit 24 is a true and correct copy of excerpts of the Deposition of Salvatore Renna taken on April 1, 2003.
26. Attached hereto as Exhibit 25 is a true and correct copy of excerpts of the Deposition of Lee Allen Rose taken on December 11, 2002.
27. Attached hereto as Exhibit 26 is a true and correct copy of excerpts of the Deposition of David Sankey taken on December 17, 2002.
28. Attached hereto as Exhibit 27 is a true and correct copy of excerpts of the Deposition of Richard Sorrentino taken on May 6, 2003.
29. Attached hereto as Exhibit 28 is a true and correct copy of excerpts of the Deposition of Claudia Waterman taken on May 14, 2003.
30. Attached hereto as Exhibit 29 is a true and correct copy of Sears' Report on Form 10-K for the year ended December 28, 2003.

31. Attached hereto as Exhibit 30 is a true and correct copy of a "Termination of Pilot Program" form dated November, 13 and 14, 2001 (Bates No. S000624).
32. Attached hereto as Exhibit 31 is a true and correct copy of an email from Steven Mandel to William Posternack dated November 27, 2001 (Bates No. DL082).
33. Attached hereto as Exhibit 32 is a true and correct copy of a document entitled "Product Repair Services Home Dispatch Implementation – Project Overview and Management Presentation" (Bates Nos. S001518-S001664).
34. Attached hereto as Exhibit 33 is a true and correct copy of a document entitled "Six Sigma - Ready on Time Team" dated May 21, 2002 (Bates Nos. S020065-S020079).
35. Attached hereto as Exhibit 34 are true and correct copies of two documents entitled "Technician Agreement" dated March 9, 2002 (Bates No. S000625-626).
36. Attached hereto as Exhibit 35 is a true and correct copy of the October 2001 issue of "Commitment" magazine (Bates Nos. S007181-S007197).
37. Attached hereto as Exhibit 36 is a true and correct copy of a document entitled "HHT Flow" (Bates Nos. S006888-20237).
38. Attached hereto as Exhibit 37 is a true and correct copy of a document entitled "Windows Hand Held Terminal User's Guide" dated August 31, 1999 (Bates Nos. S007881-S007965).
39. Attached hereto as Exhibit 38 is a true and correct copy of a document entitled "Management Frequently Asked Questions" (Bates Nos. S000007-S000011).
40. Attached hereto as Exhibit 39 is a true and correct copy of Defendant's Answers to Plaintiffs' Second Set of Requests for Admissions Propounded on Defendant, dated January 28, 2003.

41. Attached hereto as Exhibit 40 is a true and correct copy of a document entitled "In-Home Technician Process Manual – Revision 4, April 12, 2002" (Bates Nos. S000962-S001226).

42. Attached hereto as Exhibit 41 is a true and correct copy an email from Steve Jones to route managers dated October 25, 2001, subject "Average Commute Time Table" (Bates No. S020491)

43. Attached hereto as Exhibit 42 are true and correct copies of 5 "Sears Home Dispatch Program" communications dated January 23, 2002 (Bates Nos. S007512-7521).

44. Attached hereto as Exhibit 43 is a true and correct copy of a document entitled "FEMA (Failure Modes Effect and Analysis) – EOD Implementation" (Bates No. S007078).

45. Attached hereto as Exhibit 44 is a true and correct copy of a document entitled "Home Dispatch Implementation – October, 2001" (Bates Nos. S003164-S003324).

46. Attached hereto as Exhibit 45 is a true and correct copy of Plaintiff Joseph Kapcsos' Objections and Responses to Defendant Sears, Roebuck & Co.'s First Set of Interrogatories Propounded on Plaintiffs, dated December 20, 2002.

47. Attached hereto as Exhibit 46 is a true and correct copy of Plaintiff Shawn Lenahan's Objections and Responses to Defendant Sears, Roebuck & Co.'s First Set of Interrogatories Propounded on Plaintiffs, dated December 20, 2002.

48. Attached hereto as Exhibit 47 is a true and correct copy of a document entitled "'I Know It' Coupon – Record of Current Training" dated October 25, 2001 (Bates No. S021440; S007741-7743).

49. Attached hereto as Exhibit 48 are true and correct copies of 10 "Termination of Pilot Program" forms dated November 13 and 14, 2001 (Bates Nos. S000543-569; S000581; S000610-611).

50. Attached hereto as Exhibit 49 is a true and correct copy of a January 22, 2002 Joe Torre email attaching a document entitled "Sears Home Dispatch Program" and a talking points document for managers entitled "Voluntary Use of the Service Van" (Bates Nos. S012688-12692).

51. Attached hereto as Exhibit 50 is a true and correct copy of a document entitled "Home Dispatch from a CARS Perspective – Steve Jones, National Routing Manager" (Bates Nos. S015024-S015032).

52. Attached hereto as Exhibit 51 is a true and correct copy of a document entitled "QPI Management Q&A" dated May 5, 2002 (Bates No. S007171-7173).

53. Attached hereto as Exhibit 52 is a true and correct copy of an email from Chris Granger to Mark Good dated January 22, 2002, subject "'QPI Incentive Program" (Bates Nos. S007343-7346).

54. Attached hereto as Exhibit 53 is a true and correct copy of memorandum from Chris Granger to PRS Business Partners, subject "Customer Courtesy Call Initiative" (Bates No. S012535).

55. Attached hereto as Exhibit 54 is a true and correct copy of a document entitled "Not Home Reduction – Process Manual" dated May 7, 2002 (Bates Nos. S020036-S020040).

56. Attached hereto as Exhibit 55 is a true and correct copy of excerpts of the Deposition of Joseph Torre taken on December 19, 2002.

57. On or about April 9, 2002, I attended a status conference in this matter in the chambers of the Honorable Freda L. Wolfson. Present at that conference were myself and William Pinilis on behalf of Plaintiffs, Richard Schnadig and Kevin Gardner on behalf of Sears and Judge (then Magistrate Judge) Wolfson. At that conference Judge Wolfson inquired of Mr. Schnadig whether Sears' Home Dispatch Program (the "Program") operates in a uniform manner throughout the country. Mr. Schnadig responded, in substance, that the Program was intended to operate in a uniform manner throughout the country.

Executed at San Francisco, California on June 26, 2003.



Laurence D. King